MONTANA LEGISLATIVE HISTORY

Chapter 632 1987

Bill H 752 S _____ Original bill & history ✓ C

H. Committee on Human Services		S. Committee on Public Health, Welfare	
Hearing Date(s) 2-17	___C	Hearing Date(s) 3-4	___C
_____	___C	3-9	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 2-17	___C	Date Out 3-7	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Free Conference Committee 4-9-1987:

The Law Library has no minutes for this committee. Please check with the MT. Historical Society.

(B) THE DESIGNATION BY THE COMMISSION OF EMERGENCY PLANNING DISTRICTS THAT TOGETHER ENCOMPASS THE ENTIRE STATE; AND
(C) THE APPOINTMENT OF MEMBERS TO LOCAL PLANNING COMMITTEES IN EACH DISTRICT.

HB 751 INTRODUCED BY WINSLOW
TAX EXEMPTION TO PREVENT DISMANTLING OF NONPRODUCING MANUFACTURING IMPROVEMENTS AND NONPRODUCING RAILROAD OPERATING IMPROVEMENTS

2/14	INTRODUCED		
2/14	REFERRED TO TAXATION		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
3/06	HEARING		
3/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/16	2ND READING PASSED AS AMENDED	95	0
3/18	3RD READING PASSED	93	1
3/18	RECONSIDERED ACTION ON 3RD READING	83	5
3/18	REREFERRED TO TAXATION		
3/19	COMMITTEE REPORT--BILL PASSED		
3/20	2ND READING PASSED	96	2
3/21	3RD READING PASSED	91	5
	TRANSMITTED TO SENATE		
3/23	REFERRED TO TAXATION		
3/30	HEARING		
3/31	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/02	2ND READING CONCURRED	50	0
4/03	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	92	1
4/09	3RD READING AMENDMENTS CONCURRED	95	2
4/14	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 560 EFFECTIVE DATE: 4/20/87		

HB 752 INTRODUCED BY WINSLOW
UNIFORM HEALTH CARE INFORMATION ACT

2/14	INTRODUCED		
2/14	REFERRED TO HUMAN SERVICES & AGING		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED		
2/20	2ND READING PASSED	91	0
2/21	3RD READING PASSED	92	0
	TRANSMITTED TO SENATE		
2/23	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/04	HEARING		
3/11	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	50	0
3/20	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/25	2ND READING AMENDMENTS NOT CONCURRED	99	0
3/25	CONFERENCE COMMITTEE APPOINTED		
4/09	CONFERENCE COMMITTEE DISSOLVED		

	SENATE		
3/26	CONFERENCE COMMITTEE APPOINTED		
4/08	CONFERENCE COMMITTEE DISSOLVED	50	0
	HOUSE		
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT		
4/20	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	97	0
4/21	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	98	0
	SENATE		
4/08	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT		
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/17	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	49	0
4/22	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 632 EFFECTIVE DATE: 10/01/87		

HB 753 INTRODUCED BY RAMIREZ, ET AL.
APPOINTMENT OF PUBLIC SERVICE COMMISSIONERS

2/14	INTRODUCED		
2/14	REFERRED TO STATE ADMINISTRATION		
2/18	HEARING		
2/19	COMMITTEE REPORT--BILL NOT PASSED		
2/20	ADVERSE COMMITTEE REPORT ADOPTED	70	20

HB 754 INTRODUCED BY BRADLEY, ET AL.
PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES AND ESTABLISHES PRIORITY BASINS
BY REQUEST OF WATER POLICY COMMITTEE

2/14	INTRODUCED		
2/14	REFERRED TO JUDICIARY		
2/14	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/23	COMMITTEE REPORT--BILL PASSED		
2/25	REREFERRED TO RULES		
3/26	HEARING		
3/27	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/31	2ND READING PASSED	50	34
4/01	3RD READING PASSED	55	40
	TRANSMITTED TO SENATE		
4/03	REFERRED TO JUDICIARY		
4/08	HEARING		
4/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED	50	0
4/14	2ND READING CONCURRED	35	15
4/14	3RD READING CONCURRED		
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	85	12
4/17	TAKEN FROM 3RD READING AND PLACED ON 2ND READING		

STATUS SHEET

50th LEGISLATIVE SESSION

HUMAN SERVICES COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
686	2/10/87	2/14/87			2/14/87						
690	2/10/87	2/14/87				2/14/87					
695	2/10/87	2/14/87					2/14/87				
711	2/11/87	2/14/87			2/14/87						
712	2/11/87	2/14/87					2/14/87				
713	2/11/87	2/14/87			2/14/87						
749	2/14/87	2/17/87		2/17/87							
752	2/14/87	2/17/87		2/17/87							
780	2/16/87	2/17/87		2/17/87							
788	2/17/87	2/17/87		2/17/87							
825	2/19/87	2/19/87				2/19/87					
886	3/17/87	3/24/87				3/24/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

House BILL NO. 752

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly

disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

NEW SECTION. Section 3. Uniformity of application and construction. [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by

INTRODUCED BILL
HB-752

a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) to diagnose, treat, or maintain a patient's physical or mental condition; or

(b) that affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation,

business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

NEW SECTION. Section 5. Disclosure by health care provider. (1) Except as authorized in [sections 9 and 10] or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under [section 9(1) or (2)]. The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

NEW SECTION. Section 6. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under [section 14].

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by [sections 1 through 25], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

NEW SECTION. Section 7. Patient authorization -- retention -- effective period. (1) A health care provider

shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on [the effective date of sections 1 through 25] remains valid for 30 months after [the effective date of sections 1 through 25] unless an earlier date is specified or it is revoked under [section 8]. Health care information disclosed under such an authorization is otherwise subject to [sections 1 through 25]. An authorization written after [the effective date of sections 1 through 25] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

NEW SECTION. Section 8. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A

patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

NEW SECTION. Section 9. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient,

unless the patient has instructed the health care provider not to make the disclosure;

(4) to any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;

(5) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(6) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(7) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from redisclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(8) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(9) to an official of a penal or other custodial institution in which the patient is detained.

NEW SECTION. Section 10. Disclosure without patient's authorization -- other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law; and

(4) pursuant to compulsory process in accordance with [sections 11 and 12].

NEW SECTION. Section 11. When health care information available by compulsory process. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under [sections 23 through 25]; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

NEW SECTION. Section 12. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding or investigation under subsection (9) of [section

11], the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of [section 11] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding under subsection (9) of [section 11], that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 11] identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) Production of health care information under

[section 11] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

NEW SECTION. Section 13. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours and provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise

disposed of; or

(e) deny the request in whole or in part under [section 14] and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

NEW SECTION. Section 14. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

NEW SECTION. Section 15. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under [section 13].

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's

refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

NEW SECTION. Section 16. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of

disagreement is located, in a manner practicable under the circumstances.

NEW SECTION. Section 17. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

NEW SECTION. Section 18. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not

disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

NEW SECTION. Section 19. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under [sections 1 through 25] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under [sections 1 through 25] as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

NEW SECTION. Section 20. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under [sections 1 through 25]. If there is no personal

representative or upon discharge of the personal representative, a deceased patient's rights under [sections 1 through 25] may be exercised by persons who are authorized by law to act for him.

NEW SECTION. Section 21. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

NEW SECTION. Section 22. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under [section 6] and during the pendency of a request for examination and copying under [section 13] or a request for correction or amendment under [section 15].

NEW SECTION. Section 23. Criminal penalty. (1) A person who purposely discloses health care information in violation of [sections 1 through 25] and who knew or should have known that disclosure is prohibited is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in

violation of [sections 1 through 25], health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(3) A person who, knowing that a certification under [section 12(2)] or a disclosure authorization under [sections 6 and 7] is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

NEW SECTION. Section 24. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce [sections 1 through 25]. The court may order any relief authorized by [section 25].

NEW SECTION. Section 25. Civil remedies. (1) A person aggrieved by a violation of [sections 1 through 25] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 1 through 25] and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification, pursuant to [section 12(2)], is not liable for disclosures made in reliance on that

certification.

(4) In an action by a patient alleging that health care information was improperly withheld under [sections 13 and 14], the burden of proof is on the health care provider to establish that the information was properly withheld.

(5) If the court determines that there is a violation of [sections 1 through 25], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(6) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(7) An action under [sections 1 through 25] is barred unless the action is commenced within 3 years after the cause of action accrues.

Section 26. Section 50-5-106, MCA, is amended to read:

50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on

forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and [section 23], unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with [sections 1 through 25]. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Section 27. Section 50-15-704, MCA, is amended to read:

"50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of ~~50-16-311~~ [sections 1 through 25] are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized

disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state."

Section 28. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with [sections 1 through 25] information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

NEW SECTION. Section 29. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 30. Repealer. Sections 50-16-301 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are

repealed.

-End-

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman R. Budd Gould, on February 17, 1987, at 12:30 p.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present except Rep. Cody.

CONSIDERATION OF HOUSE BILL NO. 752:

REP. CAL WINSLOW, House District No. 89, sponsor of the bill, stated the bill is called the Uniform Health Information Act. He said the bill came out of the National Conference of Commissioners of Uniform State Laws. He explained the bill is a repealer of a number of sections that deal with the health care confidentiality act, replacing it with the Uniform Health Care Information Act. He said it deals in a number of areas; 1) to allow disclosure to other persons for providing health care to a patient without the patients authorization to disclosure. 2) the area of who may have access to patient records, 3) if a patient requests information they are to receive it within a certain number of days, 4) it gives the health care facility the right to charge for those records, 5) if a physician puts something damaging in the records it allows the patients to have it taken out of their records, or at least have them file a statement of disagreement, that would continue with their files. He noted the uniform law had been worked on for three years by the American Medical Association, the American Hospital Association and others concerned in the area.

PROPONENTS:

BILL LEARY, representing the Montana Hospital Association. He stated after a quick review of the bill he had no problems with it and encouraged the committee to support the bill.

OPPONENTS: None.

REP. WINSLOW closed by saying he thought it was important that states unify some of their laws, especially in the area where there is so much health care moving from state to state.

QUESTIONS FROM THE COMMITTEE:

In response to a question from REP. KITSELMAN, REP. WINSLOW explained the bill gives the opportunity for an

individual to sign a statement that they do not want information released.

REP. SANDS questioned why there is a criminal penalty for purposefully disclosing information whereas there is no penalty provided for someone who refuses to provide information. REP. WINSLOW agreed that the penalty should be there also if the provider does not give the information.

CONSIDERATION OF HOUSE BILL NO. 749:

REP. CAROLYN SQUIRES, House District No. 58, sponsor of the bill, stated the bill is an act requiring the Department of Health and Environmental Sciences to make unannounced inspections to licensed health care facilities.

PROPONENTS:

ELSIE LATHAM, President of the Montana Senior Citizens Association, read her prepared statement in favor of HB # 749. See EXHIBIT # 1.

KAREN RICHEY, West Mont Home Health Care, rose in support of HB # 749. She said she believed that unannounced visits by state licencing agencies would be a method to increase the quality of care that goes on in any health care facility.

DR. JOHN J. DRYNAN, Director of the Department of Health and Environmental Sciences, rose in support of HB # 749. He said that unannounced inspections were done prior to the federal mandate.

BILL LEARY, Montana Hospital Association. He stated that the unannounced inspections conducted by the state department of health over the past 1 and 1/2 years have not been in any way restrictive to the ability of the hospitals to provide care and he would endorse the intent of HB # 749.

ROSE SKOOG, Montana Health Care Association, said this legislation indicates a commitment on the part of the state to conduct unannounced annual inspections.

ALICE CAMPBELL, Missoula. Ms. Campbell stated her mother is in the Hillside Rest Home in Missoula and that she believes the nursing homes are tipped off when an inspection is to be held. She spoke in favor of the bill.

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEBRUARY 17, 1987
12:30 P.M.

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	X		
REP. BOB GILBERT, VICE CHAIRMAN	X		
REP. [illegible]N BROWN	X		
REP DUANE COMPTON	X		
REP. DOROTHY CODY		X	
REP. DICK CORNE'	X		
REP. LARRY GRINDE	X		
REP. STELLA JEAN HANSEN	X		
REP. LES KITSELMAN	X		
REP. LLOYD MC CORMICK	X		
REP. RICHARD NELSON	X		
REP. JOHN PATTERSON	X		
REP. ANGELA RUSSELL	X		
REP. JACK SANDS	X		
REP. BRUCE SIMON	X		
REP. CAROLYN SQUIRES	X		
REP. TONIA STRATFORD	X		
REP. BILL STRIZICH	X		

CS-30

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HOUSE BILL NO. 752 DATE FEBRUARY 17, 1987

SPONSOR REP. WINSLOW

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman R. Budd Gould, on February 17, 1987, at 7:30 p.m., in Room 312-D of the State Capitol.

ROLL CALL: All members were present except Rep. Cody and Rep. Compton who were absent.

CONSIDERATION OF HOUSE BILL NO 788:

REP. RED MENAHAN, House District No. 67, stated the bill was brought about by the fact that there are only two doctors at Montana State Hospital to practice psychiatry to over 300 patients. They work 6 days a week and are on call on the 7th. He said there is a young doctor in North Dakota who would like to come here but the medical association denies him temporary licensure, and the bill would allow the Board of Medical Examiners to issue a temporary license to qualified physicians employed at the Montana State Hospital or other state institutions. He stated the bill would also save the State of Montana money by allowing it to hire personnel in the $60-70 thousand dollar range, whereas it had contracted services for three months at the Montana Youth Treatment Center at a charge of $115-$120 thousand dollars.

PROPONENTS: None.

OPPONENTS: None.

REP. MENAHAN closed by stating he would have the two doctors who are working under these conditions write to the committee, and he would appreciate a do pass on the bill. CHAIRMAN GOULD noted because of the transmittal deadline, the committee would be taking immediate action on the bills so it would not be necessary for Rep. Menahan to request the letters.

QUESTIONS FROM THE COMMITTEE:

In response to a question from REP. HANSEN, REP. MENAHAN explained that the qualified applicant in the bill could mean medical doctors, but that the State Hospital really needs a pyschiatrist.

CONSIDERATION OF HOUSE BILL NO. 780:

REP. BOB GILBERT, House District No. 22, stated he was

through a long process they determined he was entitled to work comp benefits. He said it is the only case he was aware of, so the $122,000 on the handout was paid to one man.

CHAIRMAN GOULD asked for further discussion on REP. STRIZICH'S motion to take HB # 24 off the table. The question was called; the motion FAILED with 7 favorable votes and 9 opposing votes. Roll call # 1.

ACTION ON HOUSE BILL NO. 752:

REP. GILBERT moved DO PASS on HB # 752; the question was called for, the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 749:

REP. SQUIRES moved DO PASS on HB # 749; the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 675:

REP. RUSSELL moved DO PASS on HB # 675; the Chairman called for discussion on the bill. REP. MC CORMICK made a substitute motion that HB # 675 DO NOT PASS.

A very lengthy discussion was held on reversing the smoking areas to non-smoking areas in public buildings.

REP. KITSELMAN moved to strike section 7, which is the penalty section of the bill, which would leave the language to say "an office and work area in buildings maintained by the state or public subdivision thereof, in which 7 or more employees of the state or political subdivision are employed, the manager or person in charge of the work area shall arrange non-smoking, smoking areas in a convenient area.

REP. SANDS said he thought the most important part of the bill is the part that extends the non-smoking to the work place in public or private places as well.

REP. KITSELMAN then moved to amend section 7, under penalties, back to the original language, which would reinsert the striken language and strike the new language. It would then read "a person fails to designate or reserve a smoking or non-smoking area in his establishment as provided for in 50-50-401 is quilty of a misdeamor and is subject to a fine of not more than $25.00".

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEBRUARY 17, 1987

7:30 P.M.

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	X		
REP. BOB GILBERT, VICE CHAIRMAN	X		
REP. JAN BROWN	X		
REP DUANE COMPTON	X		
REP. DOROTHY CODY		X	
REP. DICK CORNE'	X		
REP. LARRY GRINDE	X		
REP. STELLA JEAN HANSEN	X		
REP. LES KITSELMAN	X		
REP. LLOYD MC CORMICK	X		
REP. RICHARD NELSON	X		
REP. JOHN PATTERSON	X		
REP. ANGELA RUSSELL	X		
REP. JACK SANDS	X		
REP. BRUCE SIMON	X		
REP. CAROLYN SQUIRES	X		
REP. TONIA STRATFORD	X		
REP. BILL STRIZICH	X		

STANDING COMMITTEE REPORT

FEBRUARY 17, 19 87

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report HOUSE BILL NO. 752

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. R. BUDD GOULD, Chairman

UNIFORM HEALTH CARE INFORMATION ACT

FIRST WHITE

reading copy (color)

CHAIRMAN--SEN. DOROTHY ECK SECRETARY-ELLEN NEHRING
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M-W-F TIME: 1:00 P.M.

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0752	2/23	3/04		CONCUR AS AMENDED		3/7/87
WINSLOW, CAL			UNIFORM HEALTH CARE INFORMATION ACT			
HB0788	2/23	3/11		TABLED		
MENAHAN, RED			REQUIRE TEMPORARY LICENSURE OF QUALIFIED PHYSICIANS EMPLOYED AT INSTITUTIONS			
HB0789	3/02	3/18		CONCUR AS AMENDED		3/23/87
HARPER, HAL			REVISES DEFINITION OF HAZARDOUS WASTE MANAGEMENT FACILITY			
HB0825	3/02	3/23		CONCUR		3/25/87
MCCORMICK, MAC			SUBROGATE RIGHT OF SRS TO REPAYMENT OF GA BENEFITS OUT OF SSI LUMP SUM AWARD			
HB0878	4/03	4/07		CONCUR		4/7/87
ADDY, KELLY			APPROPRIATION FOR AIR QUALITY MONITORS IN YELLOWSTONE COUNTY			
HJ0037	3/02	3/23		CONCUR AS AMENDED		3/25/87
GLASER, BILL			JOINT RESOLUTION ASKING DOCTORS TO JOIN "PARTICIPATING PHYSICIANS PROGRAM"			
HJ0045	3/31	4/08		CONCUR		4/8/87
WINSLOW, CAL			REQUESTING A STUDY OF THE COST OF MANDATING HEALTH INSURANCE BENEFITS			
HJ0053	4/15			CONCUR		4/16/87
BULGER, TOM			INTERIM STUDY OF WELFARE, MEDICAID, AND GENERAL ASSISTANCE SYSTEM			

House BILL NO. 752

INTRODUCED BY Winslow

A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly

THERE ARE NO CHANGES IN HB 752 AND DUE TO LENGTH WILL NOT BE RE-RUN. PLEASE REFER TO SECOND READING (YELLOW) COPY FOR COMPLETE TEXT.

THIRD READING
HB 752

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

INTRODUCED BY House BILL NO. 752

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(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

NEW SECTION. Section 3. Uniformity of application and construction. [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by

SECOND READING
HB -752

a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) to diagnose, treat, or maintain a patient's physical or mental condition; or

(b) that affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation,

business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

NEW SECTION. Section 5. Disclosure by health care provider. (1) Except as authorized in [sections 9 and 10] or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under [section 9(1) or (2)]. The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

NEW SECTION. Section 6. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under [section 14].

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by [sections 1 through 25], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

NEW SECTION. Section 7. Patient authorization -- retention -- effective period. (1) A health care provider

shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on [the effective date of sections 1 through 25] remains valid for 30 months after [the effective date of sections 1 through 25] unless an earlier date is specified or it is revoked under [section 8]. Health care information disclosed under such an authorization is otherwise subject to [sections 1 through 25]. An authorization written after [the effective date of sections 1 through 25] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

NEW SECTION. Section 8. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A

patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

NEW SECTION. Section 9. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient,

unless the patient has instructed the health care provider not to make the disclosure;

(4) to any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;

(5) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(6) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(7) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from redisclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(8) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(9) to an official of a penal or other custodial institution in which the patient is detained.

NEW SECTION. Section 10. Disclosure without patient's authorization -- other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law; and

(4) pursuant to compulsory process in accordance with [sections 11 and 12].

NEW SECTION. Section 11. When health care information available by compulsory process. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under [sections 23 through 25]; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

NEW SECTION. Section 12. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding or investigation under subsection (9) of [section

11], the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of [section 11] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding under subsection (9) of [section 11], that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 11] identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) Production of health care information under

[section 11] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

NEW SECTION. Section 13. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours and provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise

disposed of; or

(e) deny the request in whole or in part under [section 14] and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

NEW SECTION. Section 14. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

NEW SECTION. Section 15. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under [section 13].

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's

refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

NEW SECTION. Section 16. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of

disagreement is located, in a manner practicable under the circumstances.

NEW SECTION. Section 17. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

NEW SECTION. Section 18. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not

disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

NEW SECTION. Section 19. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under [sections 1 through 25] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under [sections 1 through 25] as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

NEW SECTION. Section 20. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under [sections 1 through 25]. If there is no personal

representative or upon discharge of the personal representative, a deceased patient's rights under [sections 1 through 25] may be exercised by persons who are authorized by law to act for him.

NEW SECTION. Section 21. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

NEW SECTION. Section 22. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under [section 6] and during the pendency of a request for examination and copying under [section 13] or a request for correction or amendment under [section 15].

NEW SECTION. Section 23. Criminal penalty. (1) A person who purposely discloses health care information in violation of [sections 1 through 25] and who knew or should have known that disclosure is prohibited is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in

violation of [sections 1 through 25], health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(3) A person who, knowing that a certification under [section 12(2)] or a disclosure authorization under [sections 6 and 7] is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

NEW SECTION. Section 24. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce [sections 1 through 25]. The court may order any relief authorized by [section 25].

NEW SECTION. Section 25. Civil remedies. (1) A person aggrieved by a violation of [sections 1 through 25] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 1 through 25] and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification, pursuant to [section 12(2)], is not liable for disclosures made in reliance on that

certification.

(4) In an action by a patient alleging that health care information was improperly withheld under [sections 13 and 14], the burden of proof is on the health care provider to establish that the information was properly withheld.

(5) If the court determines that there is a violation of [sections 1 through 25], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(6) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(7) An action under [sections 1 through 25] is barred unless the action is commenced within 3 years after the cause of action accrues.

Section 26. Section 50-5-106, MCA, is amended to read:

50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on

forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and [section 23], unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with [sections 1 through 25]. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Section 27. Section 50-15-704, MCA, is amended to read:

"50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of ~~50-16-311~~ [sections 1 through 25] are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized

disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state."

Section 28. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with [sections 1 through 25] information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

NEW SECTION. Section 29. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 30. Repealer. Sections 50-16-301 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are

repealed.

-End-

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

March 4, 1987

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Dorothy Eck on March 4, 1987 at 1 P.M. in room 410 of the State Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HOUSE BILL NO. 749: Rep. Carolyn Squires, District # 68, sponsor of H.B. 749, stated that the purpose of the bill is to make unannounced inspections of health care facilities and clarify in state law this practice, which is now happening because of federal requirements.

PROPONENTS: Helen McKnight, Montana Senior Citizens, testified that the senior citizens support this bill because they would like to have in law the practice that is now happening. They support the inspections of health care facilities because it protects the well-being of senior citizens and other residents of health-care facilities. Exhibit # 1.

Rose Skoog, Montana Health Care Association, testified that the bill clarifies the practice of inspections that is now going on, and it is a commitment by the state to do the inspections.

William Leary, Montana Hospital Association, stated that the practice of unannounced inspections now begun because of federal regulations should be supported by state law.

Doug Blakelee, Governor's Council on the Elderly, stated that they support the bill on behalf of consumers and that it addresses the concerns that senior citizens have of institutions.

Barbara Booher, Montana Nurses' Association, stated that they promote preventive measures and patient safety and support the previous testimony. Exhibit # 2.

In closing, Rep. Squires stated that all concerned groups have cooperated in the drafting of this bill, and she urged the bill's passage. Exhibit # 3.

ACTION ON H.B. 749: Sen. Rassmussen moved that H. B. 749 BE CONCURRED IN. The motion passed unanimously. Sen. Rassmussen will carry the bill.

CONSIDERATION OF HOUSE BILL NO. 752: Rep. Cal Winslow, District # 89, sponsor of H.B. 752, stated that there are several reasons for the drafting of this legislation. Most states are drafiting similar legislation and this bill is similar to that drafted in other states. Because there is so much interstate movement in health care and because health care information on individuals is used by so many organizations, people need to have adequate access to their own health care information, they need to be able to correct it if necessary, relatives may have to have access to it under some circumstances, and people need to authorize who may have access to their health care information.

A number of organizations, the American Bar Association, the American Medical Association, the American Dental Association, the American Psychiatric Association and others, have been involved in the writing of Uniform Health Acts in Montana and other states. The bill offers many provisions protecting the health care information of Montana's citizens.

William Leary, Montana Hospital Association, stated that there is nothing in the bill which affects current law negatively. The bill still protects medical records, but gives a patient access to his/her records or authority over who does have access to those records. The peer committee review minutes will not be disturbed by this bill, and the MHA urges concurrence in the bill.

Steve Waldron, Montana Council of Mental Health Centers, stated that they had worked with the researcher on all sections of the bill together and they are in support of the bill.

Barbara Booher, Montana Nurses Association, stated that the Nurses' Association basically supports the bill, but that they were offering some amendments stemming from concerns they have with the bill. They offered amendments to Sec. V, Lines 18-20, eliminating the provision that a provider can disclose information without a patient's knowing, to Sec. 8, parts 2 and 3 on Pages 8-9 and Subsec. 5 on Page 9. The Nurses' Association is concerned about patient safety and privacy in each of these amendments.

OPPONENTS: Jerome Loendorf, Montana Medical Association, stated that they are basically opposed to this bill simply because of some concerns on certain sections. They have concerns about Sec. 9, Lines 8-9, that the section is not clear about what a researcher is going to do with information they are requesting and that they may consequently make prima facie disclosures. He also recommended penalties in Sec. 23, Subsec. 1 be deleted because people have better access to filing civil suits; and he proposed an additional amendment that would call for another person to witness someone's going through patient records.

DISCUSSION OF H..B 752: Sen. Rassmussen: What is the impetus of this bill?
Rep. Winslow: Most states are drafting legislation like this bill because there is so much patient movement around the nation and health information is used by so many organizations. These bills are designed to protect the patient, yet facilitate their access to their own medical records, and to enable researchers to have adequate access to health care information.

Sen. Eck: Most of the concerns with the bill seem to stem from concerns with confidentiality?
Mr. Loendorf: Yes, that is correct.
Sen. Eck: Are state laws uniform?
Mr. Leary: State laws do vary, but a reasonable attempt is being made to bring these laws together.

Sen. Himsl: This deals with what someone else can do with patient records. Can patients get their own records?

Mr. Leary: In the hospital field, a patient can review his/her own records and request a copy of those records. The hospital always retains the original.

Mr. Loendorf: From the physician standpoint, that is not the case. The reason that the physician is not required to release all records is so that the provider can write down a complete record of the patient, and the physician does not want to ruin the doctor-patient relationship.

Sen. Himsl: What if the records are wanted for a malpractice case?
Mr. Loendorf: In cases of malpractice, the law allows the patient to get the full record.

Sen. Eck: Mr. Waldron, What special rules are there on confidentiality relating to mental health centers?
Mr. Waldron: There is a problem with the confidentiality law because you can only disclose records between professional persons. The confidentiality section doesn't work well in mental health treatment.
Sen. Eck: Does this section mean that records can be shared without a patient's approval?
Mr. Waldron: You really can't share records without a patient's approval. Within an agency, not all persons really have access to the records, although a nonprofessional does need to handle the records for various reasons.

Rep. Winslow closed his testimony by reiterating that a number of developments in recent years threaten confidentiality. These include third-party plans, involvement of more government agencies and access to computors. But many groups have worked on this bill to allow access to records for worthwhile purposes while yet protecting confidentiality. The governemnt places importance on access to information, but yet people need to know that this information is being handled correctly and that they, too, have access to their own records.

CONSIDERATION OF HOUSE BILL NO. 402: Rep. Wm. Strizich, District # 41, sponsor of H.B. 402, stated that the purpose of H.B. 402 is to solve the management of records in mental health facilities over long periods of time. The holding of records is creating some severe storage problems. The bill allows the DHES to specify the length of time that records must be kept.

PROPONENTS: Steve Waldron, Montana Council of Mental Health Centers, testified that the current law requires that a number of records be kept, but that nowhere in the law is it clear as to how long the records need to be retained. Consequently, centers have up to thirty years of records and they are running out of stroage space. It would be an expensive process to purchase microfish equipment and to microfilm thirty years worth of records. It is questionable, anyway, as to how long records need to be kept; and the DHES would be the appropriate authority to decide a proper length of time.

Sen. Himsl: Does this confidentiality section conflict with the section in Title 53?

Mr. Waldron: The two sections don't fit together and some major work needs to be done in mental health law.

Sen. Himsl: Did you say that the Board of Visitors if going to approve of disclosure of patient records to a patient?
Mr. Waldron: Yes, that's what it means under current law and the bill does not change that.

Sen. Eck: The previous bill has a section on retention of records. What does that mean?
Mr. Waldron: In H.B. 752, you have to keep a record of authorization to disclose records. This current law does not conffict with 752. H.B. 752 doesn't deal with retention of records.

Sen. Eck: How long are hospitals required to keep records?
Mr. Leary: The Sept., 1986, edition states ten years. If the records are photostated, we keep the card index for twenty-five years. The previous bill also refers to retaining a list of who the records are provided to, also.

Sen. Strizich closed on H.B. 402 by thanking the committee for the hearing.

The meeting adjourned at 2:30 P.M.

Dorothy Eck

CHAIRMAN

ROLL CALL

Public Health, Welfare and Safety COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3-4-87

NAME	PRESENT	ABSENT	EXCUSED
Dorothy Eck	X		
Bill Norman	X		
Bob Williams	X		
Darryl Meyer	X		
Eleanor Vaughn	X		
Tom Rasmussen	X		
Judy Jacobson	X		
Harry H. "Doc" McLane	X		
Matt Himsl	X		
Tom Hager	X		

Each day attach to minutes.

SENATE Public Health COMMITTEE

BILL HB 749, 752, 402 VISITORS' REGISTER DATE 2-4-87

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOS
Bill Leary	Mont Hosp Assn	749	✓	
Bill Leary	" " "	752	✓	
Bill Leary	" " "	402	Neutral	
Case Skaug	MT. HEALTH CARE ASSN	749	✓	
Steve Waldron	Mental Health Centers	402	X	
Steve Waldron	Mental Health Centers	752	X	
Jeff Deegan III (?)	DHES	749	✓	
Jacqueline McKnight	DHES	749	✓	
B. Booher	MNA	749	✓	
Jan Cronquist	MNA	752	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

March 9, 1987

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Dorothy Eck on March 9, 1987, at 1 P.M. in Room 410 of the State Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF H.B. 196: Rep. Joan Miles, District # 45, sponsor of H.B. 196, stated that the purpose of the bill is simply to extend the jurisdiction of the Medical-Legal Panel to include dentists. The Medical Legal Panel was created ten years ago to discourage legal suits that don't have merit. The dentists will fund their portion of the the review panel.

PROPONENTS: Roger Tippy, Montana Dental Association, stated that this is a simple bill to extend the jurisdicion of the Medical-Legal Panel and that it was drafted with the advice and consent of both doctors and dentists and the legal association.

John Ahlman, Sec.-Treas., Montana Dental Association, stated that he has followed the work of the Medical-Legal Panel in their settling of disputes, that he has surveyed 454 dental members in the state, and that the members are requesting that they be included under the jurisdiction of this panel.

DISCUSSION OF H.B. 196: Sen. Himsl: Does this panel include the denturists?
Mr. Tippy: No.
Sen. Himsl: Is the assessment made by the panel made to the Board of Dentistry?
Mr. Tippy: Each individual dentist would be assessed. Also, a board may license a number of professions but they are not always subject to the jurisdiction of the Medical-Legal Panel.

Rep. Miles closed by stating that this is a bill that the groups involved have cooperated on and all are agreed to; the dentists are also in agreement with the reasonable fee.

ACTION ON H.B. 196: Sen. McLane moved that H.B. 196 BE CONCURRED IN. The vote in favor was unanimous. Sen. McLane will carry the bill.

CONSIDERATION OF HOUSE BILL NO. 364: Rep. Dorothy Bradley, District # 79, sponsor of H.B. 364, stated that the purpose of the bill is to merge the Board of Denturity with the Board of Dentistry. The bill comes to the legislature at the request of the legislative audit committee.

The bill removes one dentist from the board, reducing their number from five to four, while it adds one denturist to the board. The dentists are concerned about the loss of the one dentist because of the work that each often does in licensing new dentists.

The laws passed by the 1985 session as a result of the Denturity initiative on the 1984 ballot state that the two boards will be merged if there are fewer than thirty licensed denturists in the state by 1987. At present, there are twelve to eighteen licensed denturists in the state, with only twelve in active practice. The likelihood that thirty denturists will be practicing in Montana seems unlikely.

John Northey, Legislative Audit Office, discussed the legislative audit report and stated that the bill is self-explanatory from that report. This audit was treated as a routine audit and it raised some questions about the board having all applicants meet qualifications, questions of proper routine, and questions of proper fees. The audit office then reported back to the legislature as required.

Sen. Jacobson: You have touched on the problem of the audit and found some concerns with it.
Sen. Rassmussen: If this fails, are there any other sunset provisions?
Mr. Northey: No. The denturist law will remain on the books and the board will remain, as well. If the bill passes, the practice of denturity remains, but the denturity board does not. But other boards function as complete units and represent different factions of a profession.

Sen. Eck: When we had the split between LPN's and RN's, the LPN's had a mini board initially; they now function as a full board and act on all issues.

Sen. Himsl: Are there denturists licensed who don't practice here?
Lisa Casman: Yes, there are denturists who do that so that they can practice in a region.
Sen. Himsl: And there is an assessment against all denturists, not just those practicing in that state?
Ms. Casman: Yes.

Sen. Williams: How many denturists are practicing in the state?
Sen. Eck: Twelve.

Tom Ryan: The AARP is neither pro nor con on the bill and feels that there is nothing in the bill that couldn't be worked out.

Rep. Bradley closed by stating that there was nothing by the legislative audit committee and that the audit was done according to professional standards. Her recommendation was made after hearing from the publid, as well, and she considers the bill fair to all groups.

ACTION ON HOUSE BILL NO. 752: Karen Renne explained the amendments to H.B. 752. The section dealing with the dangerous patient is being deleted because another bill in the Senate deals with this issue in a more thorough way. P. 14, Line 2 provides for a patient to see his/her own records or to be provided a copy of records and to receive those records in other than business hours. Line 22 strikes the criminal penalty because it is too easy for the number of providers to make an honest mistake. The third section of amendments deal with the chemically dependent person's records and brings this person into line with the current code. This amendment also includes the mental health patient's records.

Sen. Eck: Could you explain the need for the institutional review board in Line 17?

Mr. Leary: Montana does not have big requests for research projects to be reviewed, so there are no project review boards in hospitals now. This board would cover any requests for information by providing for flexible boards.

Sen. Rassmussen moved that the Montana Nurses Association amendments receive a do pass.

Sen. Himsl: There is quite a difference in the relationship that these amendments propose.
Sen. Eck: Yes, these amendments say that the patient must be asked.
Karen Renne: That applies if the requestor is an intimate family member or another health care provider.
Sen. Eck: This provides added privacy for the patient.
Karen Renne: The provisions on the top of page 11 also protect patient privacy unless there is a compelling state interest.

The question was called for the MNA amendments. The amendments received a 9-1 vote in favor. Sen. Hager voted no.

Sen. Jacobson moved that the amendments proposed by the Montana Medical Association receive a do pass.

Sen. Jacobson: There are three provisions for penalties in this bill. This amendment eliminates the criminal penalty that is the first one listed. It is not fair to impose such a penalty when there are so many instances in which information may be legally disclosed. We haven't proved the need for so strong a penalty, and we can correct that in two years, if we need it.

The motion to remove the criminal penalty received a unanimous DO PASS.

The third set of amendments proposed by the mental health centers clarifies the procedures that take precedence. Sen. McLane moved that the amendments receive a DO PASS. The amendments passed unanimously.

The final amendment concerned the institutional review board. Sen. Eck stated that since there are no institutional review boards, institutions would have to establish them if someone came in and asked to do research.

Mr. Leary: We do get requests for statistical information from various organizations. When the hospital gets requests from non bona fide organizations they are inclined to say no. They are equipped, however, to set up review committees quickly to review legitmate requests for information. It is usually possible to blot out patients' names on records.

Sen. McLane moved the passage of the bill as amended. The bill received a unanimous BE CONCURRED IN AS AMENDED. Sen. McLane will carry the bill.

ACTION ON H.B. 536: Sen. Hager moved that H.B. 536 BE CONCURRED IN. The motion carried unanimously. Sen. Hager will carry the bill.

ROLL CALL

Public Health, Welfare and Safety COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 2-9-87

NAME	PRESENT	ABSENT	EXCUSED
Dorothy Eck	X		
Bill Norman	X		
Bob Williams	X		
Darryl Meyer	X		
Eleanor Vaughn	X		
Tom Rasmussen	X		
Judy Jacobson	X		
Harry H. "Doc" McLane	X		
Matt Himsl	X		
Tom Hager	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

SCRhb752

SENATE

March 7, 19 87

MR. PRESIDENT

We, your committee on Public Health, Welfare, and Safety

having had under consideration House Bill No. 752

third reading copy (blue color)

UNIFORM HEALTH CARE INFORMATION ACT

WINSLOW (McLane)

Respectfully report as follows: That House Bill No. 752

BE AMENDED AS FOLLOWS:

1. Title, line 5.
Following: "50-15-704,"
Insert: "53-21-166,"

2. Page 5, lines 18 through 20.
Following: "years"
Strike: remainder of line 18 through "(2)]" on line 20

3. Page 8, line 12.
Following: "who"
Insert: "has provided a written assurance that the information obtained will not be improperly disclosed and who"

4. Page 9, line 1.
Strike: "unless"
Insert: "if"

5. Page 9, following line 1.
Strike: "not"

6. Page 9, lines 3 through 6.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

March 9, 19 87

7. Page 9, line 11.
Following: "practice,"
Strike: "unless"
Insert: "if"

8. Page 9, line 12.
Following: "provider"
Strike: "not"

9. Page 9, line 25.
Following: "from"
Strike: "redisclosure"
Insert: "improper disclosure"

10. Page 11, line 1.
Following: "information,"
Strike: "unless"
Insert: "if"

11. Page 11, line 2.
Following: "provider"
Strike: "not"

12. Page 14, line 12.
Following: "hours"
Strike: "and"
Insert: "or"

13. Page 21, lines 16 through 22.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

14. Page 25, following line 4.
Insert: "Section 28. Section 53-21-166, MCA," is amended to read:

"53-21-166. Records to be confidential -- exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. ~~Such~~ Except as provided in [sections 1 through 25] information and records may be disclosed only:

(1) in communications between qualified professional persons in the provision of services or appropriate referrals;

CONTINUED

March 9, 1987

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104.""

Renumber: subsequent sections

BE CONCURRED IN AS AMENDED

3-10-87

Dorothy Eck

Senator Eck

HOUSE BILL NO. 752

INTRODUCED BY WINSLOW

A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, 53-21-166, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

NEW SECTION. Section 3. Uniformity of application and construction. [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation,

determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) to diagnose, treat, or maintain a patient's physical or mental condition; or

(b) that affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a

health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

NEW SECTION. Section 5. Disclosure by health care provider. (1) Except as authorized in [sections 9 and 10] or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years~~,--except-for-a person-who-has-examined-the-recorded-health-care-information under-[section-9(1)-or-(2)]~~. The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of

the information disclosed.

NEW SECTION. Section 6. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under [section 14].

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by [sections 1 through 25], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

NEW SECTION. Section 7. Patient authorization --

retention -- effective period. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on [the effective date of sections 1 through 25] remains valid for 30 months after [the effective date of sections 1 through 25] unless an earlier date is specified or it is revoked under [section 8]. Health care information disclosed under such an authorization is otherwise subject to [sections 1 through 25]. An authorization written after [the effective date of sections 1 through 25] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

NEW SECTION. Section 8. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial

action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

NEW SECTION. Section 9. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who HAS PROVIDED A WRITTEN ASSURANCE THAT THE INFORMATION OBTAINED WILL NOT BE IMPROPERLY DISCLOSED AND WHO requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, ~~unless~~ IF the patient has instructed the health care provider not to make the disclosure;

~~(4)--to--any--person--if--the--health---care---provider reasonably--believes--that-disclosure-will-avoid-or-minimize an-imminent-danger-to-the-health-or-safety-of-the-patient-or any-other-individual;~~

~~(5)~~(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, ~~unless~~ IF the patient has instructed the health care provider not to make the disclosure;

~~(6)~~(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

~~(7)~~(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable

form;

(c) contains reasonable safeguards to protect the information from ~~redisclosure~~ IMPROPER DISCLOSURE;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

~~(8)~~(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

~~(9)~~(8) to an official of a penal or other custodial institution in which the patient is detained.

NEW SECTION. Section 10. Disclosure without patient's

authorization -- other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, ~~unless~~ IF the patient has instructed the health care provider ~~not~~ to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law; and

(4) pursuant to compulsory process in accordance with [sections 11 and 12].

NEW SECTION. Section 11. When health care information available by compulsory process. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has

placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under [sections 23 through 25]; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

NEW SECTION. Section 12. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or

modified, if health care information is sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding or investigation under subsection (9) of [section 11], the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of [section 11] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding under subsection (9) of [section 11], that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 11] identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the

written certification as a permanent part of the patient's health care information.

(3) Production of health care information under [section 11] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

NEW SECTION. Section 13. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours and OR provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and

the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under [section 14] and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

NEW SECTION. Section 14. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's

identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care

provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

NEW SECTION. Section 15. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under [section 13].

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the

request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

NEW SECTION. Section 16. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

NEW SECTION. Section 17. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

NEW SECTION. Section 18. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

NEW SECTION. Section 19. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under [sections 1 through 25] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under [sections 1 through 25] as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

NEW SECTION. Section 20. Representative of deceased

patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under [sections 1 through 25]. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under [sections 1 through 25] may be exercised by persons who are authorized by law to act for him.

NEW SECTION. Section 21. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

NEW SECTION. Section 22. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under [section 6] and during the pendency of a request for examination and copying under [section 13] or a request for correction or amendment under [section 15].

NEW SECTION. Section 23. Criminal penalty. ~~(1)---A person--who--purposely--discloses-health-care-information-in violation-of-[sections-1-through-25]-and-who-knew-or--should have--known--that--disclosure--is--prohibited-is-guilty-of-a misdemeanor-and-upon-conviction-is-punishable-by-a-fine--not exceeding-$10,000-or-imprisonment-for-a-period-not-exceeding 1-year,-or-both.~~

~~(2)~~(1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of [sections 1 through 25], health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

~~(3)~~(2) A person who, knowing that a certification under [section 12(2)] or a disclosure authorization under [sections 6 and 7] is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

NEW SECTION. Section 24. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce [sections 1 through 25]. The court may order any relief authorized by [section 25].

NEW SECTION. Section 25. Civil remedies. (1) A person aggrieved by a violation of [sections 1 through 25] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 1 through 25] and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification, pursuant to [section 12(2)], is not liable for disclosures made in reliance on that certification.

(4) In an action by a patient alleging that health care information was improperly withheld under [sections 13 and 14], the burden of proof is on the health care provider to establish that the information was properly withheld.

(5) If the court determines that there is a violation of [sections 1 through 25], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(6) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(7) An action under [sections 1 through 25] is barred unless the action is commenced within 3 years after the cause of action accrues.

Section 26. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department.

Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and [section 23], unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with [sections 1 through 25]. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Section 27. Section 50-15-704, MCA, is amended to read:

"50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of ~~50-16-311~~ [sections 1 through 25] are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state."

SECTION 28. SECTION 53-21-166, MCA, IS AMENDED TO READ:

"53-21-166. Records to be confidential -- exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. ~~Such~~ Except as provided in [sections 1 through 25], information and records may be disclosed only:

(1) in communications between qualified professional persons in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a

physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104."

Section 29. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The

registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with [sections 1 through 25] information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

NEW SECTION. Section 30. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Repealer. Sections 50-16-301 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are repealed.

-End-

CONFERENCE COMMITTEE REPORT

Report No. ....One.....

April 10 19 87

SPEAKER

We, your ~~Free~~ Conference Committee on

on House Bill 752

and considered Senate Committee on Public Health, Welfare, and Safety amendments to the third reading copy, dated March 7, 1987.

recommend as follows:

That House Bill 752, reference copy, be amended as indicated in the instructions.

hat this Conference Committee report be adopted.

THE SENATE

Dorothy Eck

~~DOROTHY ECK~~

Tom Rasmussen

~~TOM RASSMUSSEN~~

Tom Hager

TOM HAGER

T REJECT

FOR THE HOUSE

Bob Gilbert

~~BOB GILBERT~~

Carl Winslow

~~CARL WINSLOW~~

Tom Bulger

TOM BULGER

INSTRUCTIONS

1. Page 3, lines 19 through 22.
Following: "provider"
Strike: remainder of line 19 through "affects" on line 22
Insert: ", including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect"

2. Page 4, following line 25.
Insert: "(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:
(a) authorized by law to evaluate health care services; and
(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers."
Renumber: subsequent subsection

3. Page 5, line 21.
Following: "~~[section 9(1) or 9(2)]~~"
Insert: "except for an agent or employee of the health care provider or a person who has examined the recorded health care information under [section 9(2)]."

4. Page 8, lines 13 through 15.
Following: "who" on line 13
Strike: remainder of line 13 through "WHO" on line 15

5. Page 9, line 4.
Following: "~~unless~~"
Strike: "IF"
Insert: "unless"

6. Page 9, line 5.
Following: "~~not~~"
Insert: "not"

7. Page 9, line 14.
Following: "~~unless~~"
Strike: "IF"
Insert: "unless"

8. Page 9, line 15.
Following: "~~not~~"
Insert: "not"

Dorothy Eck

Chairman.

STATE PUB. CO.
Helena, Mont.

9. Page 11, line 4.
Following: "~~unless~~"
Strike: "IF"
Insert: "unless"

10. Page 11, line 5.
Following: "~~not~~"
Insert: "not"

11. Page 11, line 12.
Following: "law;"
Strike: "and"
Insert: "(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility, if the patient was injured on a public roadway, or was injured by the possible criminal act of another; or"
Renumber: subsequent subsection

12. Page 12, line 3.
Following: "will"
Insert: "or other document"

13. Page 16, line 9.
Following: "purposes;"
Strike: "or"
Insert: "(e) the health care provider obtained the information from a person other than the patient; or"
Renumber: subsequent subsection

14. Page 16, following line 11.
Insert: "(2) Except as provided in [section 19], a health care provider may deny access to health care information by a patient who is a minor if:
(a) the patient is committed to a mental health facility; or
(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information."
Renumber: subsequent subsections

15. Page 16, lines 22 through 24.
Following: "provider"
Strike: ", selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this state to treat"
Insert: "who is providing health care services to"

Dorothy Eck
Chairman.

STATE PUB. CO.
Helena, Mont.

16. Page 23, following line 4.
Insert: "(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of [sections 1 through 25] to the attention of the patient or an appropriate authority."
Renumber: subsequent subsections

17. Page 25, lines 16 and 17.
Following: "qualified"
Strike: "professional persons"
Insert: "professionals"

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Dorothy Eck
Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 752

INTRODUCED BY WINSLOW

A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, 53-21-166, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

NEW SECTION. Section 3. Uniformity of application and construction. [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation,

determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

~~(a) to diagnose, treat, or maintain a patient's physical or mental condition; or~~

~~(b) that affects~~, INCLUDING MEDICAL OR PSYCHOLOGICAL DIAGNOSIS, TREATMENT, EVALUATION, ADVICE, OR OTHER SERVICES THAT AFFECT the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic,

nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased

individual who has received health care.

(11) "PEER REVIEW" MEANS AN EVALUATION OF HEALTH CARE SERVICES BY A COMMITTEE OF A STATE OR LOCAL PROFESSIONAL ORGANIZATION OF HEALTH CARE PROVIDERS OR A COMMITTEE OF MEDICAL STAFF OF A LICENSED HEALTH CARE FACILITY. THE COMMITTEE MUST BE:

(A) AUTHORIZED BY LAW TO EVALUATE HEALTH CARE SERVICES; AND

(B) GOVERNED BY WRITTEN BYLAWS APPROVED BY THE GOVERNING BOARD OF THE HEALTH CARE FACILITY OR AN ORGANIZATION OF HEALTH CARE PROVIDERS.

~~(11)~~(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

NEW SECTION. Section 5. Disclosure by health care provider. (1) Except as authorized in [sections 9 and 10] or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years~~,--except-for-a person-who-has-examined-the-recorded-health-care-information under-[section-9(1)-or-(2)]~~ EXCEPT FOR AN AGENT OR EMPLOYEE OF THE HEALTH CARE PROVIDER OR A PERSON WHO HAS EXAMINED THE RECORDED HEALTH CARE INFORMATION UNDER [SECTION 9(2)]. The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

NEW SECTION. Section 6. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under [section 14].

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an

authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by [sections 1 through 25], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

NEW SECTION. Section 7. Patient authorization -- retention -- effective period. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on [the effective date of sections 1 through 25] remains valid for 30 months after [the effective date of sections 1 through 25] unless an

earlier date is specified or it is revoked under [section 8]. Health care information disclosed under such an authorization is otherwise subject to [sections 1 through 25]. An authorization written after [the effective date of sections 1 through 25] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

NEW SECTION. Section 8. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

NEW SECTION. Section 9. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who ~~HAS-PROVIDED-A-WRITTEN ASSURANCE--THAT--THE--INFORMATION--OBTAINED--WILL---NOT---BE IMPROPERLY---DISCLOSED---AND---WHO~~ requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, ~~unless~~ IF UNLESS the patient has instructed the health care provider ~~not~~ NOT to make the disclosure;

~~(4)--to---any---person--if--the--health--care--provider reasonably-believes-that-disclosure-will-avoid--or--minimize an-imminent-danger-to-the-health-or-safety-of-the-patient-or any-other-individual;~~

~~(5)~~(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with

the laws of the state and good medical or other professional practice, ~~unless~~ IF UNLESS the patient has instructed the health care provider ~~not~~ NOT to make the disclosure;

~~(6)~~(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

~~(7)~~(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from ~~redisclosure~~ IMPROPER DISCLOSURE;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

{8}(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

{9}(8) to an official of a penal or other custodial institution in which the patient is detained.

NEW SECTION. Section 10. Disclosure without patient's authorization -- other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, ~~unless~~ IF UNLESS the patient has instructed the health care provider ~~not~~ NOT to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law; and

(4) TO A LAW ENFORCEMENT OFFICER ABOUT THE GENERAL PHYSICAL CONDITION OF A PATIENT BEING TREATED IN A HEALTH CARE FACILITY, IF THE PATIENT WAS INJURED ON A PUBLIC ROADWAY, OR WAS INJURED BY THE POSSIBLE CRIMINAL ACT OF ANOTHER; OR

{4}(5) pursuant to compulsory process in accordance with [sections 11 and 12].

NEW SECTION. Section 11. When health care information available by compulsory process. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will OR OTHER DOCUMENT;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under [sections 23 through 25]; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

NEW SECTION. Section 12. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding or investigation under subsection (9) of [section 11], the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process

or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of [section 11] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding under subsection (9) of [section 11], that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 11] identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) Production of health care information under [section 11] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

NEW SECTION. Section 13. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours and OR provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under [section 14] and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

NEW SECTION. Section 14. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(E) THE HEALTH CARE PROVIDER OBTAINED THE INFORMATION FROM A PERSON OTHER THAN THE PATIENT; OR

~~(e)~~(F) access to the health care information is otherwise prohibited by law.

(2) EXCEPT AS PROVIDED IN [SECTION 19], A HEALTH CARE PROVIDER MAY DENY ACCESS TO HEALTH CARE INFORMATION BY A PATIENT WHO IS A MINOR IF:

(A) THE PATIENT IS COMMITTED TO A MENTAL HEALTH FACILITY; OR

(B) THE PATIENT'S PARENTS OR GUARDIAN HAVE NOT AUTHORIZED THE HEALTH CARE PROVIDER TO DISCLOSE THE PATIENT'S HEALTH CARE INFORMATION.

~~(2)~~(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

~~(3)~~(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care

provider~~,---selected---by--the--patient,--who--is--licensed, certified,-or-otherwise-authorized-under-the--laws--of--this state--to-treat~~ WHO IS PROVIDING HEALTH CARE SERVICES TO the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

NEW SECTION. Section 15. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under [section 13].

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

NEW SECTION. Section 16. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

NEW SECTION. Section 17. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

NEW SECTION. Section 18. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who

maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

NEW SECTION. Section 19. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under [sections 1 through 25] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under [sections 1 through 25] as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

NEW SECTION. Section 20. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under [sections 1 through 25]. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under [sections 1 through 25] may be exercised by persons who are authorized by law to act for him.

NEW SECTION. Section 21. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

NEW SECTION. Section 22. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under [section 6] and during the pendency of a request for examination and copying under [section 13] or a request for correction or amendment under [section 15].

NEW SECTION. Section 23. Criminal penalty. ~~(1)---A person who purposely discloses health care information in violation of [sections 1 through 25] and who knew or should~~

~~have--known--that--disclosure--is--prohibited-is-guilty-of-a misdemeanor-and-upon-conviction-is-punishable-by-a-fine--not exceeding-$10,000-or-imprisonment-for-a-period-not-exceeding 1-year,-or-both.~~

~~(2)~~(1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of [sections 1 through 25], health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

~~(3)~~(2) A person who, knowing that a certification under [section 12(2)] or a disclosure authorization under [sections 6 and 7] is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

NEW SECTION. Section 24. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce [sections 1 through 25]. The court may order any relief authorized by [section 25].

NEW SECTION. Section 25. Civil remedies. (1) A person aggrieved by a violation of [sections 1 through 25] may

maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 1 through 25] and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification, pursuant to [section 12(2)], is not liable for disclosures made in reliance on that certification.

(4) NO DISCIPLINARY OR PUNITIVE ACTION MAY BE TAKEN AGAINST A HEALTH CARE PROVIDER OR HIS EMPLOYEE OR AGENT WHO BRINGS EVIDENCE OF A VIOLATION OF [SECTIONS 1 THROUGH 25] TO THE ATTENTION OF THE PATIENT OR AN APPROPRIATE AUTHORITY.

~~(4)~~(5) In an action by a patient alleging that health care information was improperly withheld under [sections 13 and 14], the burden of proof is on the health care provider to establish that the information was properly withheld.

~~(5)~~(6) If the court determines that there is a violation of [sections 1 through 25], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

~~(6)~~(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably

incurred in the litigation.

~~(7)~~(8) An action under [sections 1 through 25] is barred unless the action is commenced within 3 years after the cause of action accrues.

Section 26. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and [section 23], unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with [sections 1 through 25]. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Section 27. Section 50-15-704, MCA, is amended to read:

"50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of ~~50-16-311~~ [sections 1 through 25] are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state."

SECTION 28. SECTION 53-21-166, MCA, IS AMENDED TO READ:

"53-21-166. Records to be confidential -- exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. ~~Such~~ Except as provided in [sections 1 through 25], information and records may be disclosed only:

(1) in communications between qualified ~~professional persons~~ PROFESSIONALS in the provision of services or

appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil

procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104."

Section 29. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with [sections 1 through 25] information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

NEW SECTION. Section 30. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Repealer. Sections 50-16-301 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are

repealed.

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